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I

106TH CONGRESS
1ST SESSION

H. R. 491

To amend parts C and D of title XVIII of the Social Security Act to improve the operation of the Medicare+Choice and Medigap programs.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1999

Mr. STARK (for himself, Mr. BROWN of Ohio, Mrs. THURMAN, Mr. WAXMAN, Mr. LEWIS of Georgia, Mr. McDERMOTT, Mr. LEVIN, Mr. MATSUI, Mr. NEAL of Massachusetts, Mr. FRANK of Massachusetts, Mr. MORAN of Virginia, Mr. FROST, Mr. MARKEY, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend parts C and D of title XVIII of the Social Security Act to improve the operation of the Medicare+Choice and Medigap programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECU-**
4 **RITY ACT; TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Medicare+Choice Program Improvement Act of 1999”.

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; amendments to Social Security Act; table of contents.
- Sec. 2. Enrollment of medicare beneficiaries in alternative Medicare+Choice plans and Medigap coverage in case of involuntary termination of Medicare+Choice enrollment.
- Sec. 3. Applying Medigap and Medicare+Choice protections to disabled and ESRD medicare beneficiaries.
- Sec. 4. Prohibition of attained-age rating of premiums for Medigap policies.
- Sec. 5. Non-preemption of State prescription drug coverage mandates in case of approved State Medigap waivers.
- Sec. 6. Prohibition of cold-call marketing of Medicare+Choice plans.
- Sec. 7. Flexibility in definition of service area under the Medicare+Choice program.
- Sec. 8. 3-year phase-in of risk adjustment of Medicare+Choice plan payments.
- Sec. 9. Delay in certain deadlines under the Medicare+Choice program.
- Sec. 10. Taking into account costs of VA and DOD military facility services to medicare-eligible beneficiaries in calculation of Medicare+Choice plan payment rates.
- Sec. 11. Increase in civil monetary penalties for failure to meet Medigap open enrollment requirements.
- Sec. 12. NAIC review and update of benefit packages for Medigap policies.

SEC. 2. ENROLLMENT OF MEDICARE BENEFICIARIES IN ALTERNATIVE MEDICARE+CHOICE PLANS AND MEDIGAP COVERAGE IN CASE OF INVOLUNTARY TERMINATION OF MEDICARE+CHOICE ENROLLMENT.

(a) PERMITTING ENROLLMENT IN ALTERNATIVE PLANS UPON RECEIPT OF NOTICE OF MEDICARE+CHOICE PLAN TERMINATION.—

(1) ENROLLMENT IN ALTERNATIVE
MEDICARE+CHOICE PLANS.—Section 1851(e)(4) (42
U.S.C. 1395w-21(e)(4)) is amended—

(A) in subparagraph (A), by inserting be-
fore the semicolon at the end the following: “or
the organization or plan, respectively, has pro-
vided notice to the individual of the impending
termination (or termination or discontinuation,
respectively)”; and

(B) by adding at the end the following: “In
the case described in subparagraph (A), the
right to make a new election under this para-
graph shall extend through the end of the next
annual, coordinated election period.”.

(2) MEDIGAP PLANS.—Section 1882(s)(3)(A)
(42 U.S.C. 1395ss(s)(3)(A)) is amended, in the mat-
ter following clause (iii)—

(A) by inserting “(or, if elected by the in-
dividual, the date of notification of the individ-
ual by the plan or organization of the impend-
ing termination or discontinuance of the plan in
the area in which the individual resides)” after
“the date of the termination of enrollment de-
scribed in such subparagraph”;

1 (B) by inserting “(or date of such notifica-
2 tion, respectively)” after “the date of termi-
3 nation or disenrollment”; and

4 (C) by inserting after “63 days” the fol-
5 lowing: “(or 92 days in the case of a termi-
6 nation or discontinuation of coverage under the
7 types of circumstances described in section
8 1851(e)(4)(A))”.

9 (3) EFFECTIVE DATE.—The amendments made
10 by this subsection apply to notices of intended termi-
11 nation made by group health plans and
12 Medicare+Choice organizations after the date of the
13 enactment of this Act.

14 (b) GUARANTEED ACCESS FOR CERTAIN MEDICARE
15 BENEFICIARIES TO MEDIGAP POLICIES IN CASE OF IN-
16 VOLUNTARY TERMINATION OF COVERAGE UNDER A
17 MEDICARE+CHOICE PLAN.—

18 (1) IN GENERAL.—Section 1882(s)(3)(C)(iii)
19 (42 U.S.C. 1395ss(s)(3)(C)(iii)) is amended by in-
20 serting “or an individual described in subparagraph
21 (B)(ii) or (B)(iii) in the case of circumstances de-
22 scribed in section 1851(e)(4)(A)” after “subpara-
23 graph (B)(vi)”.

24 (2) EFFECTIVE DATE.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the amendment made by paragraph
3 (1) applies to terminations of coverage effected
4 on or after the date of the enactment of this
5 Act.

6 (B) TRANSITIONAL MEDIGAP OPEN EN-
7 ROLLMENT PERIOD FOR CERTAIN INDIVIDUALS
8 AFFECTED BY PLAN WITHDRAWALS DURING
9 1998.—In the case of an individual described in
10 subparagraph (B)(ii) or (B)(iii) of section
11 1882(s)(3) of the Social Security Act in the
12 case of circumstances described in section
13 1851(e)(4)(A) of such Act (relating to dis-
14 continuation of a plan or organization entirely
15 or in an area), if the termination or discontinu-
16 ation of coverage occurred as of the end of
17 1998, and before the date of the enactment of
18 this Act, the provisions of subparagraph (A) of
19 section 1882(s)(3) such Act (in the matter up
20 to and including clause (iii) thereof) shall apply
21 to such an individual who seeks enrollment
22 under a medicare supplemental policy during
23 the 92-day period beginning with the first
24 month that begins more than 30 days after the
25 date of the enactment of this Act in the same

1 manner as such provisions apply to an individ-
2 ual described in the matter following such
3 clause (iii).

4 **SEC. 3. APPLYING MEDIGAP AND MEDICARE+CHOICE PRO-**
5 **TECTIONS TO DISABLED AND ESRD MEDI-**
6 **CARE BENEFICIARIES.**

7 (a) ASSURING AVAILABILITY OF MEDIGAP COV-
8 ERAGE.—

9 (1) IN GENERAL.—Section 1882(s) (42 U.S.C.
10 1395ss(s)) is amended—

11 (A) in paragraph (2)(A), by striking “is 65
12 years of age or older and is” and inserting “is
13 first”;

14 (B) in paragraph (2)(D), by striking “who
15 is 65 years of age or older as of the date of
16 issuance and”; and

17 (C) paragraph (3)(B)(vi), by striking “at
18 age 65”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) apply terminations of coverage ef-
21 fected on or after the date of the enactment of this
22 Act, regardless of when the individuals become eligi-
23 ble for benefits under part A or part B of title
24 XVIII of the Social Security Act.

1 (b) PERMITTING ESRD BENEFICIARIES TO ELECT
2 ANOTHER MEDICARE+CHOICE PLAN IN CASE OF PLAN
3 DISCONTINUANCE.—

4 (1) IN GENERAL.—Section 1851(a)(3)(B) (42
5 U.S.C. 1395w-21(a)(3)(B)) is amended by striking
6 “except that” and all that follows and inserting the
7 following: “except that—

8 “(i) an individual who develops end-
9 stage renal disease while enrolled in a
10 Medicare+Choice plan may continue to be
11 enrolled in that plan; and

12 “(ii) in the case of such an individual
13 who is enrolled in a Medicare+Choice plan
14 under clause (i) (or subsequently under
15 this clause), if the enrollment is discon-
16 tinued under section 1851(e)(4)(A) the in-
17 dividual will be treated as a
18 ‘Medicare+Choice eligible individual’ for
19 purposes of electing to continue enrollment
20 in another Medicare+Choice plan.”.

21 (2) EFFECTIVE DATE.—(A) The amendment
22 made by paragraph (1) applies to terminations and
23 discontinuations occurring on or after the date of
24 the enactment of this Act.

1 (B) Clause (ii) of section 1851(a)(3)(B) of the Social
2 Security Act (as inserted by such amendment) also shall
3 apply to individuals whose enrollment in a
4 Medicare+Choice plan was terminated or discontinued as
5 of the end of 1998. In applying this subparagraph, such
6 an individual shall be treated, for purposes of part C of
7 title XVIII of the Social Security Act, as having discon-
8 tinued enrollment in such a plan as of the date of the
9 enactment of this Act.

10 **SEC. 4. PROHIBITION OF ATTAINED-AGE RATING OF PRE-**
11 **MIUMS FOR MEDIGAP POLICIES.**

12 Section 1882 (42 U.S.C. 1395ss) is amended by add-
13 ing at the end the following new subsection:

14 “(v)(1) A medicare supplemental policy may not be
15 issued or renewed (or otherwise provide coverage after the
16 deadline established under paragraph (2)) in any State
17 unless the premiums for the policy do not increase for an
18 individual under the policy based on the aging of the indi-
19 vidual.

20 “(2) The requirement of paragraph (1) shall apply
21 to premiums for policies under a timetable, recognized by
22 the Secretary, that provides for an appropriate phase-in
23 of such requirement. The Secretary shall recognize as the
24 timetable such timetable as the National Association of
25 Insurance Commissioners may recommend to the Sec-

1 retary within 9 months after the date of the enactment
2 of this subsection.”.

3 **SEC. 5. NON-PREEMPTION OF STATE PRESCRIPTION DRUG**
4 **COVERAGE MANDATES IN CASE OF AP-**
5 **PROVED STATE MEDIGAP WAIVERS.**

6 (a) IN GENERAL.—Section 1856(b)(3) (42 U.S.C.
7 1395w-26(b)(3)) is amended—

8 (1) in subparagraph (A), by striking “The
9 standards” and inserting “Subject to subparagraph
10 (C), the standards”, and

11 (2) by adding at the end the following new sub-
12 paragraph:

13 “(C) CONTINUATION OF STATE PRESCRIP-
14 TION DRUG LAWS.—Subparagraph (A) shall not
15 supersede any State law that requires the com-
16 prehensive coverage of prescription drugs or
17 any regulation that carries out such a law, if—

18 “(i) the State has a waiver in effect
19 under section 1882(p)(6)(A) with respect
20 to requiring such coverage under medicare
21 supplemental policies; or

22 “(ii) the Secretary provides for a
23 waiver for the State to impose such a re-
24 quirement under section 1882(p)(6)(B).”.

1 (b) MEDIGAP WAIVER.—Section 1882(p)(6) (42
2 U.S.C. 1395ss(p)(6)) is amended—

3 (1) by inserting “(A)” after “(6)”, and

4 (2) by adding at the end the following new sub-
5 paragraph:

6 “(B) The Secretary also may waive the application
7 of the standards described in paragraph (1)(A)(i) for a
8 State to include comprehensive prescription drug coverage
9 among the benefits required for all medicare supplemental
10 policies.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section take effect on the date of the enactment of
13 this Act.

14 **SEC. 6. PROHIBITION OF COLD-CALL MARKETING OF**
15 **MEDICARE+CHOICE PLANS.**

16 (a) IN GENERAL.—Section 1851(h)(4) (42 U.S.C.
17 1395w-21(h)(4)) is amended—

18 (1) by striking “and” at the end of subpara-
19 graph (A),

20 (2) by striking the period at the end of sub-
21 paragraph (B) and inserting “; and”, and

22 (3) by adding at the end the following new sub-
23 paragraph:

24 “(C) shall include a prohibition against, di-
25 rectly or indirectly, conducting door-to-door, tel-

1 ephonic, or other ‘cold-call’ marketing of enroll-
2 ment under this part.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) apply to marketing of enrollment conducted
5 on or after the date of the enactment of this Act.

6 **SEC. 7. FLEXIBILITY IN DEFINITION OF SERVICE AREA**
7 **UNDER THE MEDICARE+CHOICE PROGRAM.**

8 (a) IN GENERAL.—Section 1854(a) (42 U.S.C.
9 1395w-24(a)) is amended by adding at the end the follow-
10 ing new paragraph:

11 “(6) SPECIAL RULES FOR SERVICE AREAS.—

12 “(A) IN GENERAL.—For purposes of this
13 subsection, except as provided in this para-
14 graph, the term ‘service area’ means, for a
15 Medicare+Choice organization that—

16 “(i) offers commercial health insur-
17 ance coverage, that portion of the area
18 identical to the service area used for pur-
19 poses of offering such commercial cov-
20 erage; or

21 “(ii) is a provider-sponsored organiza-
22 tion that receives a Federal waiver of cer-
23 tain requirements under section 1855(a)(2)
24 and does not offer commercial health in-
25 surance coverage, such area proposed by

1 the organization and approved by the Sec-
2 retary.

3 “(B) LIMITATION ON SERVICE AREA.—In
4 no case shall a service area for an organization
5 include any area in which the organization is
6 unable to provide benefits consistent with the
7 requirements of section 1852(d).

8 “(C) TRANSITION FOR CURRENT CONTRAC-
9 TORS.—In the case of a Medicare+Choice orga-
10 nization that has in effect a contract under this
11 part with the Secretary as of January 1, 1999,
12 subparagraph (A) shall not apply to a contract
13 year that begins before January 1, 2004, if the
14 organization provides evidence that it has not
15 (on or after January 1, 1999) eliminated, from
16 the service area under this part, any area in
17 which the organization continues to offer com-
18 mercial health insurance coverage.

19 “(D) PERMITTING USE OF SEPARATE COM-
20 MERCIAL RATING AREAS.—

21 “(i) IN GENERAL.—If a
22 Medicare+Choice organization offers com-
23 mercial health insurance coverage and has
24 multiple geographic areas with separate
25 premium rates, subject to clause (ii), each

1 of those commercial geographic rating
2 areas may, at the option of the organiza-
3 tion, be treated as a separate service area.

4 “(ii) LIMITATION ON SIZE.—Unless
5 otherwise approved by the Secretary, in no
6 case shall a commercial geographic rating
7 area that includes less than an entire coun-
8 ty (or equivalent area) be treated as a sep-
9 arate service area.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) applies to contract years beginning on or
12 after January 1, 2000.

13 **SEC. 8. 3-YEAR PHASE-IN OF RISK ADJUSTMENT OF**
14 **MEDICARE+CHOICE PLAN PAYMENTS.**

15 Section 1853(a)(3)(C) (42 U.S.C. 1395w-
16 23(a)(3)(C)) is amended by adding at the end the follow-
17 ing: “Such risk adjustment methodology shall be imple-
18 mented in a phased-in manner over a 3-year period.”.

19 **SEC. 9. DELAY IN CERTAIN DEADLINES UNDER THE**
20 **MEDICARE+CHOICE PROGRAM.**

21 (a) DELAY IN RATE PROMULGATION DEADLINE.—
22 Section 1853(b)(1) (42 U.S.C. 1395w-23(b)(1)) is
23 amended by striking “March 1” and inserting “May 1”.

1 (b) DELAY IN DEADLINE FOR SUBMISSION OF AD-
 2 JUSTED COMMUNITY RATES AND RELATED INFORMA-
 3 TION.—

4 (1) IN GENERAL.—Section 1854(a)(1) (42
 5 U.S.C. 1395w-24(a)(1)) is amended by striking
 6 “May 1” and inserting “July 1”.

7 (2) ADJUSTMENT IN INFORMATION DISCLOSURE
 8 PROVISIONS.—Section 1851(d)(2)(A)(ii) (42 U.S.C.
 9 1395w-21(d)(2)(A)(ii)) is amended by inserting
 10 after “information described in paragraph (4) con-
 11 cerning such plans” the following: “, to the extent
 12 such information is available at the time of prepara-
 13 tion of the material for mailing”.

14 (c) DELAY IN DEADLINE FOR GUBERNATORIAL RE-
 15 QUESTS FOR CHANGES IN PAYMENT AREAS.—Section
 16 1853(d)(3) (42 U.S.C. 1395w-23(d)(3)) is amended by
 17 striking “February 1” and inserting “March 1”.

18 **SEC. 10. TAKING INTO ACCOUNT COSTS OF VA AND DOD**
 19 **MILITARY FACILITY SERVICES TO MEDICARE-**
 20 **ELIGIBLE BENEFICIARIES IN CALCULATION**
 21 **OF MEDICARE+CHOICE PLAN PAYMENT**
 22 **RATES.**

23 (a) IN GENERAL.—Section 1853(c)(3) (42 U.S.C.
 24 1395w-23(c)(3)) is amended—

1 (1) in subparagraph (A), by striking “subpara-
2 graph (B)” and inserting “subparagraphs (B) and
3 (E)”, and

4 (2) by adding at the end the following new sub-
5 paragraph:

6 “(E) INCLUSION OF COSTS OF VA AND
7 DOD MILITARY FACILITY SERVICES TO MEDI-
8 CARE-ELIGIBLE BENEFICIARIES.—In determin-
9 ing the area-specific Medicare+Choice capita-
10 tion rate under subparagraph (A) for a year
11 (beginning with 2000), the annual per capita
12 rate of payment for 1997 determined under sec-
13 tion 1876(a)(1)(C) shall be adjusted to include
14 in the rate the Secretary’s best estimate on a
15 per capita basis of the amount of additional
16 payments that would have been made in the
17 area involved under this title if beneficiaries
18 under this title had not received services from
19 facilities of the Department of Veterans Affairs
20 or the Department of Defense.”.

21 (b) BUDGET NEUTRALITY.—Section 1853(c) (42
22 U.S.C. 1395w–23(c)) is amended—

23 (1) in paragraph (1)(A), by striking “paragraph
24 (5)” and inserting “paragraph (5)(A)”;

(2) in paragraph (1)(C)(ii), by inserting before the period at the end the following: “and multiplied by the budget neutrality adjustment factor determined under paragraph (5)(B)”;

(3) in paragraph (5)—

(A) by striking “FACTOR.—” and inserting “FACTORS.—(A)”,

(B) by inserting “(not taking into account subparagraph (B))” after “so that”, and

(C) by adding at the end the following new subparagraph:

“(B) For purposes of paragraph (1)(C)(ii), for each year, the Secretary shall determine a budget neutrality adjustment factor so that the aggregate of the payments under this part shall equal the aggregate payments that would have been made under this part if paragraph (3)(E) did not apply.”.

**SEC. 11. INCREASE IN CIVIL MONETARY PENALTIES FOR
FAILURE TO MEET MEDIGAP OPEN ENROLL-
MENT REQUIREMENTS.**

(a) IN GENERAL.—Section 1882(s)(4) (42 U.S.C. 1395ss(s)(4)) is amended by striking “\$5,000” and inserting “\$50,000”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) applies to failures occurring on or after the
3 date of the enactment of this Act.

4 **SEC. 12. NAIC REVIEW AND UPDATE OF BENEFIT PACK-**
5 **AGES FOR MEDIGAP POLICIES.**

6 Section 1882(p) (42 U.S.C. 1395ss(p)) is amended—

7 (1) in paragraph (2), by striking “The bene-
8 fits” and inserting “Subject to paragraph (12), the
9 benefits”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(12)(A) The Secretary may request the National As-
13 sociation of Insurance Commissioners to review the appro-
14 priateness of the benefit packages established under para-
15 graph (2) and, if appropriate, to recommend to the Sec-
16 retary from time to time recommendations for changes in
17 such packages to better reflect the needs of beneficiaries
18 and modern medical practice.

19 “(B) If a recommendation for a change in benefit
20 packages is recommended under subparagraph (A) and
21 the Secretary finds that implementation of such rec-
22 ommendation is appropriate and consistent with carrying
23 out the purposes of this section, the Secretary may provide
24 that any reference in this subsection to the 1991 NAIC
25 Model Regulation is deemed a reference to such Regula-

1 tion as modified by the proposed recommendation. Any
2 such change shall take effect as specified by the Secretary
3 in such a manner as does not unduly disrupt the market-
4 ing of medicare supplemental policies.

5 “(C) Before implementing any recommendation
6 under subparagraph (B), the Secretary shall submit a re-
7 port to Congress on such recommendation, including a jus-
8 tification for the implementation of such recommenda-
9 tion.”.

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